

BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

IN RE:  
ANDERSON COUNTY SCHOOL  
SYSTEM,

Petitioner,

v.

DR. AND MRS. [REDACTED]  
ON BEHALF OF THEIR SON,  
[REDACTED]

Respondents.

No. 03-10

ORDER

Patty K. Wheeler  
Administrative Law Judge  
P.O. Box 2231  
Knoxville, TN 37901-2231  
July 28, 2003

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[To protect the confidentiality of the minor student, [REDACTED] will be referred to as "Student" on all remaining pages of this decision and Students' parents will be referred to as "Respondents."]

A Due Process Hearing was requested by counsel on behalf of the Anderson County School System. On March 10, 2003, the Division of Special Education, Tennessee Department of Education appointed this Administrative Law Judge to hear the case. The 45-day rule was waived by Agreement of the parties on a March 27, 2003 conference call. A Pre-Conference Letter of Agreement was issued on March 31, 2003.

The case was heard at the Anderson County School office in Clinton, Tennessee on April 22, 2003. At the close of the hearing, counsel agreed to submit Post-Hearing Briefs on or before May 12, 2003. On June 6, 2003 counsel for Respondents wrote a letter requesting a delay for the entry of an Opinion due to new evidence. Counsel for the respondents then filed a Motion for Admission of New Evidence on June 13, 2003. On June 16, 2003, counsel for the Anderson County School System filed a Petitioner's Response to Respondent's Motion for Admission of New Evidence. Both parties were given until July 9, 2003 to submit any further information that each wanted to have considered prior to the rendering of an order in this case.

#### **Procedural History:**

The Anderson County School System initiated the request for the hearing pursuant to the Individuals with Disabilities Education Act, 34 C.F.R. §300.502(b)(2)(i). The request for a Due Process Hearing was filed in response to the Parents/Respondents, (hereinafter Respondents) request for a Publically-Funded "Independent Educational Evaluation" (IEE) for their son. The school system initiated the proceeding for the purpose of proving that its evaluations of the Student were appropriate and to object to further evaluations to be

paid for by the Anderson County School System. The School System has the burden of proving that its evaluations are sufficient to meet the requirements of 20 U.S.C. §1414; 34 C.F.R. §300.530 et seq, and Tenn. Comp. R and Regs. §20520-1-9-.05.

The Respondents disagreed with the evaluations conducted by the School System and requested an Independent Educational Evaluation (IEE) because Respondents felt that none of the evaluations adequately explained the apparent drop in cognitive functioning level or how the problems identified related to the Student's performance in school, including failing Geometry, French (twice), and Chemistry; the Student's failure to understand and complete assignments and the Student's failure to perform well on tests. Respondents' disagreements with the evaluations focus on the manner in which the findings and recommendations by evaluators have been translated by the School System into the program and services for their son.

Counsel for Respondents provided an Addendum to Statement of Parent Disagreement on April 2, 2003. The Addendum stated: "The following are additional reasons the parents disagree with the evaluations conducted by the Anderson County School System.

1. None of the evaluations included observations of [REDACTED] in his math class or any class in which Math reasoning is a component of the curriculum.
2. [REDACTED] is certified as learning disabled in math reasoning.
3. The last evaluation by Janna Bopp, Ph.D., was conducted in May 2002. The only teacher that Dr. Bopp spoke to about [REDACTED] was Melinda Parish, who did not have [REDACTED] for any class. She's a teacher at the Learn Center, the School System's Alternative School. Ms. Parish at that time was working one on one with [REDACTED] at the end of the school day.

4. Janice Cole, a School Psychologist, evaluated [REDACTED] in November 2001 and recounted classroom observations of his English teacher and Special Education teacher. None of these observations were specific to Math-related issues.
5. Vance R. Sherwood, Ph.D., evaluated [REDACTED] in June 2001 and did no classroom observation.
6. Shanda Diggs, School Psychologist, evaluated [REDACTED] in April 2001 and had a classroom observation form filled out by the English teacher.
7. [REDACTED] has performed poorly this year in Geometry, Algebra II and Chemistry, all of which may be impacted by [REDACTED]'s learning disability related to math reasoning.
8. None of the evaluations have comprehensively evaluated the linkage between the processing deficits that have been identified and [REDACTED]'s lack of progress in the classroom, specifically in his math-related subjects.
9. None of the evaluations have comprehensively evaluated the impact his processing deficits have socially and psychologically. (T.R. pp. 5-7)

**Witnesses:**

The School System presented testimony by three (3) witnesses: Janice Cole, a school physiologist; Dr. Michael Greer, a psychiatrist; and Rebecca Stewart, Special Education Director for Anderson County Schools.

Respondents presented testimony by Wendy [REDACTED], [REDACTED]' mother; [REDACTED]; and Dr. Robert [REDACTED], [REDACTED]'s father.

**Issue:**

Whether the School System's evaluations complied with the Federal and State Guidelines for the conduct of evaluations as set forth by 34 C.F.R. §300.532 or Tenn. R. and Regs., Chpter 0520-1-9-.05 (45).

**Facts:**

Student is a 16-year old male who is certified to receive Special Education Services under the category of Learning Disabled. The most recent evaluations of the Student conducted by various school evaluators show that he has been eligible most recently for Special Education as Learning Disabled in Math Reasoning, although he was earlier certified as Learning Disabled in Reading, Math and Written Expression. He was also diagnosed and treated with medication for Attention Deficit Disorder by his pediatrician. (T.R. pp. 51-55; 203; Ex. 11).

Student began school in Fayetteville Christian School in North Carolina where he attended K-4 & K-5. He then transferred to the Richmond Hill Georgia School System. He attended the Richmond Hill Primary School for grades 1-3 and the Richmond Hill Elementary School until the middle of the 4<sup>th</sup> grade. Student was in Special Education in Georgia with eligibility based on the diagnosis of ADH. (T.R. pp. 211-213).

Student was then enrolled at the Clinton Elementary School in the middle of his 4<sup>th</sup> grade year. He attended Clinton Middle School until the 2<sup>nd</sup> semester of his 5<sup>th</sup> grade year when his parents transferred him to a private Christian school in Clinton. (T.R. pp. 212-214). The Student re-entered the Anderson County School System at Clinton Middle School on April 3, 2001 in the 8<sup>th</sup> grade. He has remained a student at Clinton High School since he began as a Freshman in August of 2001. (T.R. p. 222) He will be a Junior in the school year 2003. (T.R. pp. 222; 242).



**Evaluations Conducted:**

The Student was initially evaluated in Georgia. However, the report of an evaluation conducted by Mr. William Darsey in January of 1995 had not been available until shortly before the hearing in 2003. Consequently, the IEP Team had had no time to consider it. The report showed that the Student had received a full scale Intelligence Quotient score of 108 in 1995. (T.R. pp. 133-135; 209-211; Ex. 12).

The Student has been tested and evaluated by a number of professionals. These include an evaluation in 1997 by a school psychologist, Carolyn McPherson of Clinton City Schools. (Ex. 16). The Student was re-evaluated on April 3, 2001 by Shanda Diggs, school psychologist for Anderson County Schools. (Ex. 8) The test results were full scale IQ of 120 and a full scale IQ of 106 respectively. Due to continued parental concerns about the disparity in the IQ scores between the testing of Ms. McPherson and Ms. Diggs, the school offered to have the raw data of the tests reviewed by Dr. Steve McCallum, Department Chairman in School Psychology at the University of Tennessee. (T.R. pp. 133-134).

During the last week of the eighth grade, the Student allegedly made statements that were interpreted as bomb threats which was a violation of the Anderson County Zero Tolerance program. Ms. Cole, School Psychologist, recommended a psychological evaluation by Dr. Vince Sherwood who evaluated the Student on June 18, 2001 to determine if the Student could be classified as emotionally disturbed. Dr. Sherwood determined that he should not be but recommended a medical assessment regarding the

ADHD classification which he questioned. (T.R. pp. 123-125; Ex. 13). Subsequently the Student was evaluated by psychiatrist Dr. Michael Greer on September 21, 2001 (T.R. pp. 125-127). Dr. Greer opined that the presence of ADHD was doubtful. (Ex. 14).

On November 7, 2001 an Assistive Technology and Occupational Therapy evaluation was done by Anderson County School employees Linda Fall, Assistive Technology Specialist and Julia Clark, Occupational Therapist. (T.R. p. 128; Ex. 15). The evaluation was prompted by concerns of the parents about the Student's handwriting. (T.R. pp. 129-130).

Student was then referred by Becky Stewart, Special Education Director, for an Auditory Processing Evaluation to Leigh Cowan, an Audiologist. The evaluation was conducted on August 2, 2002. Although no Central Auditory Processing Deficit was found, recommendations were made by the audiologist to be utilized in the Student's educational program planning. (T.R. pp. 143-147; Ex. 17).

Ms. Stewart testified that the parents approved of all of the evaluations that were done for the Student and that all of the evaluations were paid for by the Anderson County School System. (T.R. pp. 126-130; 134; 136; 147).

**IEP Team:**

Five (5) IEP meetings were held within two (2) school years. The meetings occurred between January 2002 and March 2003. One or both parents and the Student were also in attendance at the five (5) IEP meetings. (T.R. pp. 33 - 35; Ex. 2; Ex. 3; Ex. 4; Ex. 5; Ex. 6)

Janice Cole, the School Psychologist, attended all five (5) IEP meetings as well. She was present to interpret test scores and data and to assist the Student's IEP Team to develop his educational program. (T.R. pp. 34; 44). The results of a variety of tests administered to the Student were considered by the IEP Team over time to develop his program and to make appropriate alterations as his needs changed, (Ex. 2; Ex. 3; Ex. 4; Ex. 5; Ex. 6).

Becky Stewart was present at the five (5) IEP Team meetings that occurred and was the LEA. She was the highest ranking school system official present at the IEP meetings. Ms. Stewart testified to the following concerning the IEP Team and the Team meetings. (T.R. pp. 147-148).

The IEP Team, along with the parents, made decisions regarding the Student's eligibility status and made programming decisions concerning his IEP and educational program. (T.R. pp. 149 -150; 162).

The IEP Team interpreted the evaluation data by drawing upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior. (T.R. p. 149).

The IEP Team insured that the information obtained from all sources was documented and carefully considered and that the evaluations documented classroom observations as well. (T.R. p. 147).

The IEP Team had at least one person qualified to conduct an individualized



diagnostic examination of children. (T.R. p. 149)

There were no recommendations by the IEP Team or the parents who attended the IEP Team meetings for further separate behavior evaluations to be done. (T.R. p. 177). The Student will be due for a tri-annual evaluation when he is in the 11<sup>th</sup> grade. (T.R. p. 171).

#### **Procedures for Conducting Standardized Testing and Evaluations:**

Ms. Cole, the School Psychologist, stated that in her opinion all standardized tests and evaluations were appropriately administered. She specifically stated the following.

- The standardized tests were validated for the specific purposes used. (T.R. p. 45)
- The tests were administered by certified and qualified persons (T.R. p. 46)
- The tests were administered by trained and knowledgeable evaluators (T.R. p. 46).
- The tests were conducted in accordance with the instructions provided by the producer of the test. (T.R. p. 46)
- The tests were conducted under standard conditions as specified. (T.R. p. 46).
- The tests given were tailored to assess specific areas of educational need. (T.R. p. 46)
- The evaluations were sufficiently comprehensive to identify the Student's special education and related services needs. (T.R. p. 46)
- The tests instruments were technically sound. (T.R. p. 47)
- The tests were based on scientific and reliable information. (T.R. p. 47)
- The evaluators concluded that the Student had a learning disability based on the evaluation and results of the test. (T.R. p. 47).
- The evaluators documented the basis for making the determinations which were made. (T.R. p. 47)

- The evaluators noted relevant behavior of the Student during the evaluation process. (T.R. p. 47).
- The evaluators noted the relationship of the behavior to the Student's academic functioning. (T.R. p. 48).
- The evaluators documented educational relevant medical findings. (T.R. p. 48).
- The evaluators documented whether there was a discrepancy between achievement and ability that required special education and related services. (T.R. p. 48).

### **Post Hearing Admissions:**

On June 6, 2003 counsel for Respondents submitted a request of a delay in the issuance of a decision in this case in order to submit a report by Velvet Buehler at U.T. Speech and Hearing Center who had conducted an assessment of auditory processing disorders of the Student. The evaluation had been scheduled by Dr. and Mrs. [REDACTED] following the hearing on April 22, 2003. On June 13, 2003 a Motion for Admissions of New Evidence was submitted by Respondents' counsel. On June 16, 2003 Petitioner responded to Respondents' Motion for Admission of New Evidence. Both parties were given until July 9, 2003 to submit any further information that they wished to have considered. On July 9, 2003 Respondent submitted its Memorandum in Support of its Motion for Admission of New Evidence and on July 10, 2003 Petitioner submitted a Supplemental Response to Respondents' Motion for Admission of New Evidence.

The new evidence was an evaluation by Velvet Buehler, CC-SLP/A, who tested Student for auditory processing disorders. Respondents maintain that the new evaluation showed a severe auditory processing disorder and that Student had a language impairment "That meets state criteria for certification under that category." Be that as it

may, this is not the appropriate forum or proceeding to consider that evaluation or how it should be used in the educational programming for the Student. It was necessary throughout the Hearing to re-focus Respondents on the issue which was before this Hearing Officer. (T.R. pp. 166-167; 175; 216; 221; 224; 245; 254-255). The primary issue involved the request of the Respondents for an IEE and the School Systems' response to present evidence to show whether the evaluations conducted and/or paid for by the School System complied with the procedural requirements of the IDEA and State law. Although the Respondents did not file a counter-complaint asking this Hearing Officer to consider the appropriateness of the interpretation or application of the results of any of the testing to the educational programming by the IEP Team for the Student. Respondents repeatedly raised those issues. The Respondents did not disagree with any of the testing that had been done. The Respondents did not present evidence to establish that the evaluations conducted by the School System were procedurally deficient in any manner. Certainly the Respondents have the right to obtain and pay for private evaluations of their son. Utilizing proper procedures and going through the proper channels, the Respondents can request that the School System IEP Team consider any private evaluations during the planning process for the Student's education. This is not the forum for that consideration. Thus, the Respondents' Motion for Admission of New Evidence is denied.

The Respondents are urged to approach the School System's IEP Team with the newly obtained evaluation information so that a full and appropriate educational plan can be developed by the IEP Team with all information available.

## Conclusions of Law:

One of the most important procedural rights secured by the Individuals with Disabilities Education Act (IDEA) is the right to a proper evaluation. Under 34 C.F.R. 300.532, tests and evaluation materials must include those tailored to assess a specific area of educational need and not those that are designed to provide a single general intelligence quotation. (C.F.R. 300.532)(b). Further, the child must be assessed in all areas relating to the suspected disability, including, if appropriate, academic performance. (34 C.F.R. 300.532)(g). Under 300.333, the school system must draw upon a variety of sources, including aptitude and achievement tests, in making placement decisions. (34 C.F.R. 300.533(a)(1). Further, the school system is obligated to obtain this information and ensure that it is documented and carefully considered. (34 C.F.R. 300.533(a)(2).

Pursuant to state regulations, the School System is also required to prove that its evaluations were conducted by "qualified personnel." Tenn. State Bd. of Educ. Rules, Regs and Minimum Standards, Chpter 0520-1-9-.01(45).

For a parent to obtain an Independent Educational Evaluation at School District expense, the parent must disagree with an evaluation obtained by the public agency. 34 C.F.R. 300.502(b)(1). In order to prevail in a Due Process Hearing, the School System has the burden of proving that it has satisfied all necessary elements in evaluating the Student. See Grapevine-Colieville Ind. Sch. Dist. v. Danielle R., 31 IDELR 103(N.D. Texas 1999).

The Act further requires that the School System ensure that:

(A) tests and other evaluation materials used to test a child...

(i) are selected and administered so as not be discriminatory on a racial or

cultural basis, and

(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

(B) any standardized tests that are given the child –

(i) have been validated for specific purpose for which they are used;

(ii) are administered by trained and knowledgeable personnel; and

(iii) are administered in accordance with any instructions provided by the producers of such tests;

(C) the child is assessed in all areas of suspected disability; and

(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

20 USC 1414(b)(3).

Thus, the test for appropriateness is whether the school system's own evaluation was in compliance with the IDEA. See Houston Indep. School Dist., 30 IDELR 564 (ALJ Texas 1999); San Antonio Indep. Sch. Dist., 29 IDELR 630 (ALJ Texas 1998); and Fallbrook Union Elementary Sch. Dist., 28 IDELR 678 (ALJ California 1998).

Classroom observations are required under Tennessee state regulations implementing the state special education statute. CRR of Tenn. Chapter 0520-1-3-.09(4)(a)(5)(ii).

### **Conclusions Applying the Law:**

The Respondents failed to present evidence to show that they were entitled to an independent educational evaluation because they did not present cogent evidence to prove that any of their disagreements with any of the tests or evaluations that had been

administered were based on any of the criteria that must be met. The Parents, in fact, attended five IEP Team meetings over a period of approximately two years and did not express dissatisfaction with the testing or evaluations that were recommended (T.R. p. 162). Additionally, the Parents gave written consent for all evaluations to be conducted. (T.R. p. 266). The Parents did not request nor make a suggestion for further specific evaluation of the Student until the day of the Hearing and then had no specific information about the evaluation requested. (T.R. 236-237; 252-253; 257-259). Such request or recommendation for further evaluation would be appropriate to be made to the IEP Team.

The IDEA establishes detailed criteria that constitute a "Full and Individual" evaluation. 34 C.F.R. §300.532. The evidence shows that the School System has complied with these criteria. The School Systems evaluations are not racially or culturally discriminatory (Testimony of Janice Cole, T.R. pp. 43, 53, 62-63); a variety of assessment tools and strategies have been used to gather relevant information about the child, testimony of Janice Cole, pp. 43, 44, 46, 53, 63); any standardized test used have been validated for the specific purpose for which they are used and have been administered by trained and knowledgeable personnel (testimony of Janice Cole, pp. 45, 54, 64); that tests used are tailored to assess specific areas of educational need and accurately reflect the factors the test purports to measure (testimony of Janice Cole, pp. 54, 63, 64); no single procedure is used as the sole criterion for determining whether a child qualifies for professional education (testimony of Janice Cole, p 54); the child is assessed in all areas of suspected disability (testimony of Janice Cole, pp. 43, 46, 64, 65-66; testimony of Rebecca Stewart pp. 160, 171; testimony of Dr. Michael Greer, pp. 184-186); the

evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs (testimony of Janice Cole, pp. 46, 64); and the School System's evaluation utilizes technically sound instruments and assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the child (testimony of Janice Cole, p 54). The School System verified that its evaluations were conducted by "qualified personnel." (Testimony of Janice Cole, pp. 21-24, 26, 38, 55; testimony of Dr. Michael Greer, pp. 181-182). Dr. Michael Greer, psychiatrist, testified that the evaluations had been adequate and did not recommend any further evaluations. (T.R. p. 193). Further, following the completion of the evaluation all testing results were reviewed and considered by the IEP Team. 34 C.F.R. §300.533 (Testimony of Janice Cole p. 67; testimony of Rebecca Stewart pp. 147-150).

Conversely, evidence presented by the Parents/Respondents indicated that the Parents' problem was not with the testing per se but primarily with the fact that "the testing has not yet been complete, because it still hasn't diagnosed Student's problem." (T.R. p. 235) and "I think the testing that you have done has been indecisive and incomplete." (T.R. pp. 237; 262). Further testimony by the Respondents indicated that the real concern with the evaluations and testing was that "They don't get at the root cause, they don't give a plan of action to solve the problem, and they don't explain the problem." (T.R. pp. 250-251). There was no evidence presented by Respondents that any of the testing or evaluations which had been conducted did not meet the required Federal and State Guidelines. Respondents stated that although they had attended the IEP meetings they did not really understand the explanations that had been given. (T.R. pp. 224; 251; 253;



259-260). The Respondents' testimony focused on the IEP meetings and the results of those meetings. One Parent testified "Many times the plan at IEP meetings is.. or proposal, plan is put together, its not carried out. Things just don't seem to happen that was said to happen, and time goes by and it just doesn't happen." (T.R. pp. 225-227; p. 254). Again, the Parents' focus was on the implementation and utilization of the test results by the IEP Team in developing the program for the Student and the subsequent implementation of the program for the Student. These are certainly worthy and valid concerns that need to be addressed. Unfortunately, the Due Process Hearing concerning the issue of the Independent Educational Evaluation request is not the place to address the Parents' concern on issues of interpretation of test results and the development and implementation of an IEP.

**Conclusion:**

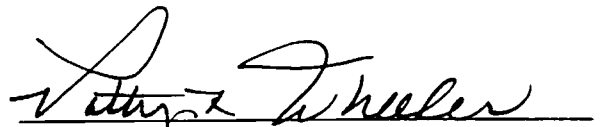
Based on the foregoing findings of fact and conclusions of law, the Court finds that the School District has carried its burden of proof that it has satisfied the IDEA's evaluation requirements in evaluating the Student. Any further recommendations for evaluations and requests for consideration of the results of private evaluations paid for by the Parents should proceed utilizing the appropriate procedures and work with the IEP Team. The Administrative Law Judge finds that the Respondents have other recourse for the issues concerning the Student's program and urges them to pursue that course.

The Court **Finds** that Anderson County School System is the prevailing party.

This decision is binding on both parties unless the decision is appealed. Any party aggrieved by this decision may appeal to the Chancery Court for Anderson County,

Tennessee, or may seek review in the United States District Court for the District in which the School System is located. Such Appeal or review must be sought within sixty (60) days of entry of a final order in a non-reimbursement case or three (3) years in cases involving educational costs and expenses. In appropriate cases the reviewing court may stay this final order.

IT IS SO ORDERED this 28th day of July, 2003.

  
Patty K. Wheeler, Administrative Law Judge